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No. 750.

IN THE

SUPREME COURT OF THE UNITED STATES.

COMPLETE AUTO TRANSIT, INC.,
Appellant,

v.

CHARLES F. CARPENTIER, Secretary of State of Illinois,
Appellee.

On Appeal from the Supreme Court of Illinois, En Banc.

BRIEF

Opposing Motion to Dismiss or Affirm the Judgment.

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BRIEF

Opposing Motion to Dismiss or Affirm the Judgment.

I.

THE FEDERAL QUESTIONS PRESENTED IN THE JURISDICTIONAL STATEMENT WERE TIMELY AND PROPERLY RAISED AND EXPRESSLY PASSED ON.

Appellee, at pages 14, 15 and 16 of his Motion, asserts to this Court that Appellant did not timely and properly raise and preserve in the state court the Federal Questions presented in the Jurisdictional Statement. Whether Appellant's assertion is to prevail depends upon whether the highest court of the State of Illinoi agrees. We therefore look to that state court for the decision.

This exact issue was presented by Appellee to the Illinois Supreme Court by motion and that court expressly ruled contrary to Appellee's contention. Since Appellee's filing and service of his Motion to Dismiss and Affirm with this Court, Appellee filed in the Court below, from which Appellant appeals and from which was issued a certification that constitutional questions were raised and preserved, Jurisdictional Statement, Appendix D, page 26, his "Motion to Rescind Certificate of the Supreme Court of the State of Illinois", Appendix A hereof. Thereafter and on March 29, 1961, the Supreme Court of Illinois issued its ruling as follows, "Motion by Appellant (Appellee on this appeal) to rescind certificate of the Supreme Court was denied", Appendix B hereof.

The aforesaid highest court of the State of Illinois, having issued its certificate that the federal questions were raised and preserved in the state courts, Appellant submits that Appellant has timely and properly raised and preserved federal questions under Illinois practice and that they were expressly passed on by the courts of the State of Illinois, as evidenced by that Court's Certificate to that effect and its denial of Appellee's Motion to Rescind said certificate.

It is clear therefore that the Illinois case cited here by Appellee and in his Suggestions in support of Motion to rescind certificate, Appendix C hereof, has no bearing and that Central Greyhound Lines v. Mealey, 334 U. S. 653, and related cases cited by Appellant, determine this matter adversely to Appellee.

II.

SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTIONS ARE PRESENTED.

A.

The crux of Appellee's argument is the complete misconception that, page 8, Motion to Dismiss, "Auto Transit seeks to establish that it may have a 'residence' in any state in which it has a terminal and garages and maintains its motor vehicles". Appellant has not sought to establish that at all. What Appellant submits, to the contrary, is that when one state, in this case Missouri, has always treated it in all respects as a domesticated corporation, as to long continued activities which Appellant must carry on in Missouri, (Jurisdictional Statement, pages 8 and 9) Illinois, under identical statutory and judicial pronouncements, denies its equal treatment by deciding it is not a resident of Missouri.

No basis for this discriminatory treatment is set forth in the Illinois Court's Opinion or the Appellee's Motion.

The treatment accorded Appellant with respect to its domestication in Missouri may be compared to the treatment under similar law of foreign corporations domesticated in Illinois. The purpose of the identical Illinois and Missouri provisions is to "place foreign corporations * * * upon precisely the same footing as domestic corporations * * * to obliterate any distinction in the treatment * * * to give the foreign corporation the same standing in the eye of the law * * * ", Friend & Co. v. Goldsmith & Seidel Co., 307 Ill. 45, 53.

Illinois has thus determined as to foreign corporations within its borders, "the residence of a foreign corporation might be in any state where it was by comity permitted

to exercise its franchise . . .", Friend & Co. v. Goldsmith & Seigel Co., supra, p. 49. Thus a Missouri corporation with a principal office in St. Louis, Missouri, but also maintaining an office and activities in Cairo, Illinois was determined to be a resident of Illinois for purposes of law like any domestic corporation, Ill. C. St. L. R. R. Co. v. Crane, 102 Ill. 249. See also Bank of North America v. Chicago, Danville and Vincennes R. R. Co., 82 Ill. 493.

Yet in exactly the reverse situation, where Missouri has in all respects treated Appellant as a resident of Missouri under exactly the same provisions of law, Illinois holds it to be a nonresident. Surely such determination is not justified merely because Appellant is a foreign carrier operating in Missouri whereas this cited Illinois decision involved foreign carriers operating in Illinois.

The Appellee has taken considerable time artfully drafting his Motion in a light which tends to steer away from the federal questions presented by this appeal.

It is not at issue here whether the state has the exclusive right to construe with finality its statutes. The construction placed upon statutes by the State of Illinois is of little concern here, but the **effect** of that construction is of grave concern to Appellant and the Supreme Court of the United States. It is here where the federal questions arise.

Likewise, Appellant does not assert in this Court, as Appellee would make believe is indicated in his Motion at pages 7 through 16, that the courts of Illinois may not interpret the Motor Vehicle Law of Illinois as it wishes. It is the **discrimination** which results to Appellant.

Appellee suggests that Appellant may in the alternative prorate its motor vehicles. Once again, this affords no defense to the federal questions presented. Furthermore, appellant would be forced and required to pay this proration tax when others similarly situated would not. This

fallacy was pointed out in the Jurisdictional Statement, pages 10 through 17.

Although Appellant asserts that the construction placed upon the Illinois Motor Vehicle Law is a right to be enjoyed by the state courts and only the effect is subject to eyes of the federal law, Appellant suggests that Appellee has failed to support even his position that the general law requires a corporation to be a "resident" of its state of incorporation. Appellee cites the **Missouri** case of State v. Tustin, 322 S. W. 2d 179, as one of the courts of last resort. In this criminal case the defendant, a motor carrier, was incorporated in Delaware. Its only office or place of business in that state is a registered agent; its principal place of business is Indiana, where the vehicles are based, garaged and usually repaired, and from whence such vehicle is usually and customarily operated. Defendant purchased the registration tax only from Indiana and did not purchase the tax from Delaware. The plaintiff, State of Missouri, contended defendant must purchase the registration tax from Delaware, the state in which it was incorporated.

This Missouri court ruled in 1959, loc cit. 182, 183:

> "It is a matter of common knowledge that a great many corporations are organized under Delaware law, although they live their actual lives and do their actual business as at least quasi citizens of Missouri and other states. A construction contended for by respondent would give Missouri a Grade A reciprocity with the State of Delaware, but it could result in leaving Missouri as an island surrounded by other states which retaliated by feeding a considerable number of our residents our own bitter medicine. This we think was not what the lawmakers intended.
>
> "It is our conclusion that Ruan (employer of defendant driver) was a resident of the State of Indiana

within the intended meaning of the act and that having complied with the laws of that state it was entitled to the privileges of occasionally operating its motor vehicle upon the highways of the State of Missouri without registering it for license in this state."

Furthermore, the plaintiff State cited this Missouri court the same cases cited by Appellee at pages 8 and 13 of his motion, to wit: Western Express Co. v. Wallace and State v. Garford Trucking Co. This court stated at loc. cit. 181 and 182:

"These cases are not too helpful, however, because in each one the exemption claimant was also a resident of the state in which it claimed the exemption."

Appellee would lead this Honorable Court to believe that Appellant has merely chosen to register its motor vehicles in Missouri, and that Appellant has made this choice recently and so as to avoid registering in Michigan. (It is the rule of this court that facts must be supported by the record and when facts, if any, are stated, citations to the record must appear. Nowhere in Appellee's motion does it support the facts it recites by record citations. This failure should be considered by the court in ruling upon Appellee's motion.)

The facts are as stated in the Jurisdictional Statement at pages 8, 9 and 10. Appellant has been transporting automobiles in interstate commerce twenty-three years from General Motors plant at St. Louis, Missouri (R. 118); the State of Illinois consistently extended Appellant reciprocity on Missouri registration tax and treated Appellant as a resident of Missouri (R. 145) until the present litigation. Is it, therefore, proper for Appellee to state something that is not in the record?

Appellant was not doing any more or less at the time of this litigation than it was twenty-three years ago when it commenced its operation at St. Louis, Missouri.

The second basic misconception in Appellee's Motion is that Appellant herein, in seeking reciprocity on similar facts, to wit, operation of its Missouri registered motor vehicles in Illinois "without the payment of any registration fees" (Motion page 3), is somehow indulging in an unusual and unique request for equal consideration. In fact, Illinois registered motor vehicles are operated over highways located in forty other states without payment of any fees, in exchange for the specific privilege denied Appellant, namely equal exemption in Illinois. Surely the hand that receiveth such privileges cannot castigate the hand that asketh only the same equal treatment. The denial of such equal treatment by one who takes advantage of it for his own purposes certainly presents a substantial federal question of first impression.

CONCLUSION.

Appellant has not now, nor does it in the future, intend to register its vehicles and pay the tax in just any state for the purpose of avoiding the Illinois tax. Appellant is treated as a resident of Missouri, Michigan and other states in which it has a principal office and bases, garages, maintains and services its vehicles. Being treated as a resident in these states, Appellant is required to pay the registration tax there. It is not a "choice" made by Appellant.

Appellant concludes that it has raised, presented and preserved the federal questions stated in its Jurisdictional Statement. This point was decided when the Supreme Court of Illinois certificated that the federal questions were raised, presented and expressly passed upon, and thereafter affirmed this certification by **denying** Appellee's "Motion to Rescind Certificate of the Supreme Court of the State of Illinois".

There are real and novel questions of first impression presented in the Jurisdictional Statement. The construction and interpretation of the Motor Vehicle Law of Illinois raises the substantial federal questions herein presented. It is earnestly urged that the court exercise its jurisdiction and rule upon the federal issues presented, thereby laying to rest these issues as they relate to motor vehicles traveling exclusively in interstate commerce.

Respectfully submitted,

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APPENDIX A.

In the Supreme Court of the
State of Illinois.

Complete Auto Transit, Inc., a Corporation,
Plaintiff Appellee,

No. 35,597.

Charles F. Carpentier, Secretary of State of the State of Illinois,
Defendant Appellant.

Motion to Rescind "Certificate of the Supreme Court of the State of Illinois".

Now comes the defendant appellant, Charles F. Carpentier, Secretary of State of the State of Illinois, and moves the Court to rescind a certain "Certificate of the Supreme Court of the State of Illinois" executed by the Honorable Walter V. Schaefer, Chief Justice, on January 12, 1961, in the above captioned cause, and for grounds therefor states as follows:

1. That the records of the Clerk of the Supreme Court of the State of Illinois show that a "Certificate of the Supreme Court of the State of Illinois" was executed by the Honorable Walter V. Schaefer, Chief Justice of the Supreme Court of the State of Illinois, on January 12, 1961, upon the motion of the plaintiff appellee, Complete Auto Transit, Inc.

2. That the defendant-appellant never at any time, prior to the execution of the certificate, nor at any time, thereafter, until on or about February 18, 1961, received any

notice with respect to the presentation of such motion to this Court. Further, records of the Clerk of the Supreme Court indicate that no notice was given to defendant-appellant and an affidavit in support of this statement is attached hereto.

3. That as a consequence since the defendant-appellant received no notice, the defendant-appellant did not have an opportunity to be heard nor to present written objections to such certificates, or with respect to such motion nor to object thereto, all contrary to the Rules of the Supreme Court of Illinois.

4. That since notice was not given to defendant-appellant and defendant-appellant had no opportunity to be heard or otherwise object in writing, said certificate should be rescinded.

5. That, in addition, defendant-appellant respectfully states that said certificate is erroneous in the following respects:

(a) Defendant-appellant states that the second sentence of the second paragraph of said certificate is incorrect and erroneous, which sentence reads as follows:

> "It is further certified that said Plaintiff-Appellee at its earliest opportunity in its Petition for Rehearing filed in this Court set up constitutional issues as follows: * * *"

This statement, in the opinion of the defendant-appellant, is incorrect since such constitutional issues were not raised by the plaintiff-appellee at its earliest opportunity and in point of fact, under the law of Illinois, plaintiff-appellee waived its right to raise constitutional issues since it failed to obtain a ruling thereon in the Circuit Court of Sangamon County and

failed to urge such constitutional issues to this Court in the above captioned cause of action.

(b) Further, the defendant appellant states that the following portion of the certificate is incorrect:

> "It is further certified that the judgment of this Court denying Plaintiff-Appellee's Petitions for Rehearing necessarily was confronted with said constitutional issues and said judgment necessarily passed on those issues and held that Section 1-155 did not violate the Fourteenth Amendment to the Constitution of the United States."

This statement is incorrect, in the opinion of defendant-appellant, since the law in Illinois is that before the Supreme Court of Illinois will pass on a constitutional question, such question must have been raised in the trial court, be urged and passed on there and be properly preserved on appeal.

In support of defendant-appellant's motion there is attached hereto the following: Affidavit of Samuel H. Young; Suggestions in Support of Motion; Certificate of the Supreme Court of the State of Illinois; Opinion of the Supreme Court of Illinois in this case; and a copy of the opinion of the Circuit Court of Sangamon County.

Respectfully submitted,

.....

William G. Clark,
Attorney General of the
State of Illinois.

Samuel H. Young,
Special Assistant Attorney General,
Of Counsel.

APPENDIX B.

State of Illinois.

Office of
Clerk of the Supreme Court,
Springfield.

March 29, 1961.

Mr. Tweedie Fisher,
Attorney at Law,
Bacon Building,
Jefferson City, Missouri.

Dear Mr. Fisher:

In Supreme Court today, in case No. 35,597, entitled:

Complete Auto Transit, Inc.,
a Corporation, Appellee,

vs.

Charles F. Carpentier, Secretary of
State of the State of Illinois,
Appellant,

motion by appellant to rescind Certificate of the Supreme Court was denied.

Very truly yours,

/s/ Mrs. Earle Benjamin Searcy,
Clerk of the Supreme Court.

APPENDIX C.

The following excerpts are from Appellee's Suggestions in Support of Motion to Rescind:

In support of the motion of the defendant, Charles F. Carpentier, to rescind or vacate a certain Certificate of the Supreme Court of the State of Illinois the following suggestions are made:

. . . . . .

That it is readily apparent upon the review of the opinion in the Circuit Court of Sangamon County and from a review of the opinion of the Supreme Court of Illinois that Complete Auto Transit, Inc., failed to preserve its right to raise issues involving the Constitution of the United States before the Supreme Court of Illinois, and, accordingly, such issues were not raised by plaintiff-appellee (Complete Auto) at its "earliest opportunity" and were not "necessarily passed on" by the Supreme Court of Illinois and in support of such contention cites the case of **Group** Securities, Inc., v. Carpentier, 13 Ill. 2d 41, 1958.

Respectfully submitted,

William G. Clark,
Attorney General of the State of Illinois.

Samuel H. Young,
Special Assistant Attorney General,
Of Counsel.